

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of)
)
)

The Telephone Consumer)
Protection Act of 1991)
_____)

CC Docket No. 92-90

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Federal Communications Commission
Office of the Secretary

COMMENTS OF THE
PUBLIC UTILITY COMMISSION OF TEXAS

The Public Utility Commission of Texas (Texas PUC) hereby submits its comments in response to the Notice of Proposed Rulemaking adopted by the Federal Communications Commission (FCC) on April 10, 1992.

Last December Congress passed the Telephone Consumer Protection Act of 1991 (TCPA). This law requires the FCC to prescribe regulations implementing TCPA's restrictions on the use of automated telephone equipment and protecting residential telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object.

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The FCC has proposed amendments to Title 47 of the Code of Federal Regulations, parts 64 and 68, and has sought public comment on the proposed amendments.

I. INTRODUCTION

Auto-dialers have been regulated under Texas law and PUC rules since 1985. In 1991 two new state laws took effect which tightened regulation of auto-dialers and imposed restrictions on telephone solicitors. State regulation has not eliminated abuses by these industries, but it has provided remedies for consumers. We offer our comments on your proposals so that you may benefit from our experience in Texas.

Texas State Regulation of Telephone Solicitation

In Texas the use of auto-dialers is restricted by state law and Substantive Rules of the Texas PUC. According to both the law and our rules, an operator of an auto-dialer must register with the Texas PUC and pay an annual fee. Calls to random or sequentially-dialed numbers are prohibited, and an operator of an auto-dialer must notify the Texas PUC of the location and phone number from which the machine is operating. Calls by an auto-dialer are prohibited during certain hours. Every recorded message from an auto-dialer must state, within the first 30 seconds, the nature of the call, the identity of the caller, and the telephone number from which the call was made.

Under Texas law, every telephone solicitor must implement its own systems and procedures to avoid calling customers who ask not to be called again. The Texas PUC is charged with determining whether a solicitor's systems and procedures

are adequate. There is no state-sanctioned industry-wide database of consumers who ask not to receive telephone solicitation.

II. EXCEPTIONS TO PROHIBITED USES OF AUTO-DIALERS

The rule as proposed would except from the restrictions on use of an auto-dialer a call placed for a non-commercial purpose, a commercial call that does not include an unsolicited advertisement, any call involving a prior or current business relationship, or any call by a tax-exempt nonprofit organization. While the Texas PUC appreciates the FCC's desire to distinguish these uses of auto-dialers from commercial solicitation, we feel that the exceptions are excessively broad considering that such uses may still impinge on the privacy rights of individuals.

Two categories of excepted calls -- calls involving a prior or current business relationship and calls by a tax-exempt nonprofit organization -- also are excluded from TCPA's restrictions on live telephone solicitation. For this reason, an excessively broad exception from auto-dialer regulations of either of these two types of calls would leave a consumer with no remedy. The consumer would not be protected from future solicitation from a party placing calls under these exceptions.

Definition of "Prior Business Relationship"

The FCC should define "prior business relationship" in such a way as to exclude a business relationship terminated by the consumer. A consumer should be able, under FCC rules, to terminate a business relationship with a party and be protected from future unwanted telephone solicitation from that party. Under the current wording of the rule, a consumer, even after terminating a business

relationship with a seller, would have no protection from repeated live or automated solicitation by that seller, since the seller could forever claim exemption from Sec. 64.1100(a)(2) and any rule adopted pursuant to TCPA, Sec. 227(c) on the grounds of a prior business relationship.

The Texas PUC supports the FCC's interpretation that a business relationship requires a voluntary two-way communication between the client and the business, and the FCC's rejection of any interpretation that would be based solely on a prior solicitation from the caller to a prospective customer.

Rewording of Sec. 64.1100(c)

The Texas PUC proposes rewording of Sec. 64.1100(c). This subsection contains unnecessary words that confuse its meaning. The Texas PUC proposed elimination of the words "by, or on behalf of, a caller:" so the subsection would read:

"(c) The term "telephone call" in § 64.1100(a)(2) shall not include a call or message

(1) that is not made for a commercial purpose,"

Interpretation of "Emergency"

The proposed rule also excepts from the category of prohibited calls those made for emergency purposes. The FCC proposes to interpret "emergency" to include situations in which it is in the public interest to convey information to consumers concerning health or safety, whether or not the event was anticipated or could have been anticipated.

The Texas PUC supports a broad interpretation of "emergency," provided that it is written so as to prevent abuse. To qualify as an emergency, the message should be time-sensitive. For example, a message warning consumers that

certain foods are high in cholesterol, although it concerns the health and safety of the public, should not fall under the exception for an emergency. A message warning of an imminent power outage or gas leak should be treated as an emergency.

IV. TECHNICAL AND PROCEDURAL STANDARDS

When TCPA Sec. 227(d)(3)(A) takes effect on December 20, 1992, it may preempt a Texas law requiring a recorded message from an auto-dialer to provide certain identifying information, including the number from which it is calling, within the first 30 seconds of the call. The Texas PUC urges the FCC to require every recorded message from an auto-dialer to include the telephone number of the operator of the auto-dialer. The proposed rule requires a recorded message from an auto-dialer to provide either the telephone number OR address of the caller. A telephone number -- preferably the number of the telephone line used by the auto-dialer -- is often necessary for enforcement authorities to locate an auto-dialer which is causing network harm or which is the subject of a consumer complaint.

The Texas PUC also encourages the FCC to require that all required identifying information be stated within the first 30 seconds of the message. This will prevent a disgruntled consumer from having to listen to a lengthy recorded message simply to get the information needed to lodge a complaint.

The TCPA and the proposed rule require a recorded message from an auto-dialer to provide the identity of the business, individual, or other entity initiating the call. Such disclosure may violate provisions of the Fair Debt Collection Practices Act when an auto-dialer is used for debt collection. The PUC believes

that where a message cannot be fashioned to meet the requirements of both laws, use of an auto-dialer should not be permitted.

V. TIME-OF-DAY RESTRICTIONS ON TELEPHONE SOLICITATION

The FCC has asked for comments on existing state restrictions on the time of day when telephone solicitation is permitted. Under Texas law, telephone solicitation is permitted only between 9 a.m. and 9 p.m. weekdays and between noon and 9 p.m. Sundays. If an auto-dialer is used for debt collection, its use is restricted to hours permitted by the federal Fair Debt Collection Practices Act.

V. TELEPHONE SOLICITATION OF BUSINESSES

The FCC seeks comment on whether the privacy concerns of businesses are adequately addressed by the special protections from auto-dialer calls for health and safety business organizations and by restricting the seizing of multi-party lines. The Texas PUC believes that businesses are entitled to the same rights as residential subscribers with regard to auto-dialers. Unconsented auto-dialer calls should be prohibited to businesses just as they are to residences, and subject to the same exceptions.

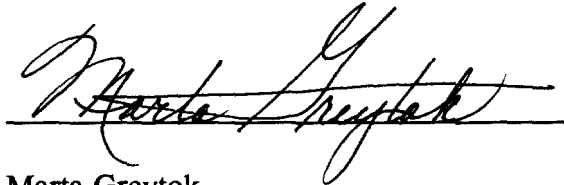
Furthermore, the Texas PUC feels that businesses also should have the same opportunity to ask not to receive telephone solicitation, and to have the request honored. This opportunity may be of special importance to small businesses which have a limited number of access lines and which may rely on telephone service for much of their business.

V. CONCLUSION

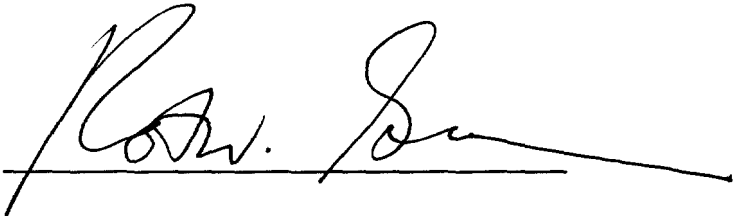
The Texas PUC supports adoption of Section 64.1100 and 68.318(c), with the modifications suggested above.

We urge the FCC to take special care to include in its rules requirements that will permit enforcement of state and federal auto-dialer regulations. This is especially important where the new federal law regarding technical and procedural standards may preempt state laws that are necessary for effective enforcement.

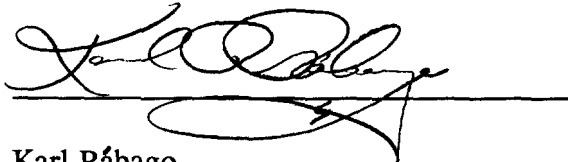
Respectfully submitted,

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Marta Greytok
Commissioner

A handwritten signature in cursive script, appearing to read 'Rob. W. Gee', written over a horizontal line.

Robert W. Gee
Chairman

A handwritten signature in cursive script, appearing to read 'Karl Rábago', written over a horizontal line.

Karl Rábago
Commissioner

PUBLIC UTILITY COMMISSION OF TEXAS